

Final Minutes of the Meeting of the Delta Protection Commission
August 26, 1999

1. Call to Order. The meeting was called to order at 6:35 p.m. Commissioners present included: Commissioners Brean, Broddrick, Cabaldon, Canciamilla, Coglianese, Harris, Chairman McCarty, McGowan, Vice Chair Mello, Nottoli, Sanders, Simas, Thomson, and Yates. Absent were Commissioners: Calone, Curry, Ferreira, Matthews, and Salmon.

2. Public Comments. There were no public comments.

3. Minutes of Last Meeting. Vice Chair Mello returned to the issue raised at the last meeting regarding the listing of steelhead; he said he had checked and verified that the steelhead and splittail are affecting permits for levee maintenance work.

On a motion by Commissioner Harris and a second by Vice Chair Mello, the draft minutes were approved unanimously by voice vote (Commissioners absent at the last meeting abstained).

4. Chairman's Report: Chairman McCarty reported the next meeting of the Delta Protection Commission is scheduled for Thursday, September 23, 1999 at 6:30 pm in the Jean Harvie Community Center. He noted that the CALFED Policy Committee held its first public meeting on August 12, and the Policy Committee will continue to meet in public in the future. There was the opportunity for public comment on agenda items prior to the consensus vote of the State and federal representatives. He said he attended as a member of BDAC. Chairman McCarty said the Governor is seeking nominations for the 1999 Governor's Environmental and Economic Leadership Awards; nominations are due September 15.

5. Commissioner Comments/Announcements. Commissioner Broddrick commented that wildfires have destroyed habitat for 4,000 spring run salmon and this could have an impact in the Delta.

6. Attorney General's Report: Dan Siegel reported there is a new head of the Land Law Section, Matt Rodriguez who has filled the spot left open when Rick Frank was promoted. Mr. Rodriguez would like to come to the Commission's next meeting; Chairman McCarty concurred.

7. Executive Director's Report. Margit Aramburu reviewed the material in the mailing packet and passed out at the meeting. She noted that SB 750 has passed all committees and was headed to the Assembly floor. She circulated photos of Bradford Island and Fisherman's Cut in Contra Costa County. She reviewed the CALFED meetings attended by staff.

8. Pending Projects Memo. There were no questions or comments about the pending projects memo.

9. Consideration of Comments on the Revised Draft Programmatic Environmental Impact Report for the CALFED Program.

Chairman McCarty said the Commission scheduled a special meeting to consider comments on the revised draft programmatic EIR for the CALFED program. He noted the program is ready to go; first phase projects are being refined and defined. He said the North, South and West Delta/Yolo Bypass Bundles; the Levee Program and the Ecosystem Restoration Program are of great interest to the Commission because of the land use changes that will result from

implementation of these bundles and programs. He noted the Commission has offered, and been asked by CALFED to provide a forum for public comment on proposed CALFED projects. To date, there is no specific guidance about the Commission's role, and the role for public and local government input into the general CALFED program, or the specific bundles now being developed.

Ms Aramburu reviewed the material in the mailing packet and the process of review by the CALFED Subcommittee. She said she added language regarding seepage in response to the proposal of CALFED to consider in-Delta water storage. She said Commissioner Curry was out of town but had e-mailed to staff his support of the letter, and continued concern about the lack of proposals for recreation as part of the overall CALFED program. She said there have been no other comments received by staff since the last meeting—from Commissioners or from the public.

Vice Chair Mello, Chair of the CALFED Subcommittee, expressed frustration that CALFED is proceeding with the screening of small siphons in the Delta because there is no scientific proof of fish entrainment. CALFED is also recommending consolidation of intakes on islands, which in many instances is unworkable.

Vice Chair Mello thanked Ms Aramburu, staff, and CALFED Subcommittee participants for their work to date on the draft letter, and said he's glad the seepage language has been included in light of the concerns raised on the Prospect Island project. He expressed frustration that CALFED signatories are carrying out CALFED goals without proper public review, and cited the Liberty Island acquisition by Trust for Public Lands as an example of circumventing the process because a non-profit entity does not have to undergo the same public review as acquisition by public entities. Under governance concerns in the letter, we need to bring up the issue of assurances that the actions in the bundles move forward at the same time to avoid moving forward with only the environmental actions before some of the other physical improvements are made.

Commissioner Yates said that although under California Environmental Quality Act (CEQA), agricultural land and its water is part of the environment and needs to be treated as any other natural resource, he doesn't believe CALFED intends to address mitigation of the cumulative impacts of the conversion of agricultural land in the Delta. The Commission needs to continue to press this issue in its letter. He cited the Prospect Island project as an example of how the Program is violating CEQA by not addressing concerns raised by local landowners, because this analysis is not required under NEPA.

Vice Chair Mello asked if Commissioner Yates felt the Commission's comments regarding the loss of water to wetlands conversion, and the request that the loss of agricultural land be mitigated under CEQA, covers this issue; Commissioner Yates responded the Department of Food and Agriculture has been and will continue pursuing this issue. He said according to legal staff and the actions taken by the Attorney General in the last few months, he believes the Department is on firm ground regarding CEQA.

Vice Chair Mello said that because the negative socioeconomic impacts in the Delta are going to be catastrophic and unavoidable, part of the mitigation for this loss should be consolidated in the Delta, in the form of conservation easements by the Agricultural Land Stewardship Program, so that farm support industries have a certain critical mass of business that's guaranteed to them.

Commissioner Yates agreed; he said that agriculture is environmentally friendly and can play a prominent role in addressing some of the issues that CALFED wants to address. He added that while the RDEIR states CALFED would restore habitat on state and federal lands first, CALFED will continue to purchase agricultural land as it moves forward.

Vice Chair Mello voiced Commissioner McGowan's earlier comments on the increased cost of mitigating Yolo County's growth under its Habitat Conservation Plan because the prime areas for this mitigation are being purchased by state and federal agencies. He said that the local HCPs should be folded into these larger restoration areas.

Commissioner McGowan said the North Delta Refuge is still a struggle for them, because U.S. Fish and Wildlife Service staff can't explain how Yolo County's HCP fits into the picture; they're not thinking about that correlation.

Commissioner Broddrick offered counterpoints to some of the Commissioners' earlier comments. He said the screening of agricultural siphons is proposed as part of the project-specific EIR/EIS for the South Delta improvements; the program to evaluate and prioritize screening of small diversions should be looked at as an opportunity instead of regulation. He added that the screens are proposed as mitigation for the adverse impacts of the State and Federal water project pumps. Regarding the Liberty Island acquisition, the TPL has taken a bridge ownership because the USFWS's environmental document has been delayed significantly, and the landowner wanted the money promised to him two years ago. Liberty Island has been described as a 'bottleneck' to flood releases into the Delta that affect the effectiveness of the Yolo Causeway upstream. One purpose of the acquisition is to relieve this bottleneck. He added no Reclamation District would want to maintain the levees to cultivate productive agricultural on Liberty Island with its history of flooding. Regarding Prospect Island, he doesn't think it will be the model for future purchases; DWR never expected the project to turn out to be the lightning rod that it is.

Commissioner Yates said that in county and city government, when land use changes, it goes through a thorough evaluation under CEQA, and CALFED should be subject to the same level of scrutiny.

Chairman McCarty asked for comments by category in the draft letter. He asked for the Commission's position on p.3, midway through, that the CALFED plan is largely consistent with the Commission's Plan; however, the large-scale conversion of agricultural land is not consistent with the Commission's Plan. On the issue of Liberty Island, Chairman McCarty said that a private landowner would not be able to do that, but it tells him that CALFED is very pro-active and ready to move forward with actions as soon as money is made available. He suggested that CALFED should not set bad precedents in terms of acquisition and other actions.

Commissioner Yates said the CVP is negotiating contracts for water well in advance of the completion of an environmental document. He said the CVP contracts will take away half of the water previously available to agricultural users/exporters, and only in very high water years will more water be available.

Commission Broddrick agreed that the environmental document should be completed first, and noted there will be a court case concluded soon that could affect the CVP contracts.

Chairman McCarty noted that the preferred alternative is a thru-Delta alternative, with a hook. If water quality and environmental improvements are not met, a peripheral canal is still on the table. He suggested that the standards that are set for evaluating the thru-Delta alternative, the measurements of those standards, and who has their finger on the trigger are important, and they need to be clear, accountable, honorable, and not one agency or one individual.

Vice Chair Mello said CALFED needs to hold off evaluation of the thru-Delta alternative until all the required improvements are made, and not set an arbitrary length of time for evaluation (seven years).

Commissioner Yates said the thru-Delta alternative takes trust, and the Delta has had promises broken in the past. He said he believes the thru-Delta alternative is the best chance for a successful project, even though there is a lot of opposition to the thru-Delta alternative from the fisheries folks.

Vice Chair Mello said there is a need to provide more storage south of the Delta, and north of the Delta, in order to provide water to help restore the ecosystem health of the Delta.

Commissioner Harris said he is concerned that the water quality in the Delta be kept fresh to protect habitat for sport fish. Commissioner Harris said he supports the letter as prepared by staff.

Commissioner Yates said the State needs to implement aggressive water conservation and new storage in order to address future water demands.

Commissioner Cabaldon suggested that the letter include a recommendation that CALFED better coordinate ecosystem restoration with other habitat plans, that will also affect agricultural land. He said there are many plans going on at the same time with the same goals but those programs are not coordinated. He suggested the programs be evaluated together to determine if there is appropriate amounts of habitat, rather than have each program continue in isolation. He suggested there be some type of formula. For example, there is a proposed national wildlife refuge and a County habitat conservation plan which will be vying for the same limited lands in Yolo County.

Ms Aramburu suggested that mitigation and enhancement need to be woven together so that mitigation projects could be counted to help reach enhancement goals.

Commissioner Cabaldon said even if there is not agreement on the amount of habitat acreage needed, there should be coordination to ensure that habitat preservation and enhancement efforts are coordinated to maximize habitat values.

Ms Aramburu noted that the Stone Lakes National Wildlife Refuge does accept mitigation sites within the refuge so it incorporates both mitigation and enhancement.

Chairman McCarty said CALFED does not appear to be aware of the local habitat conservation planning/mitigation programs, and suggested that all the habitat enhancement/mitigation acres be logged in a central site.

Commissioner McGowan said that in addition to the CALFED issues, that monitoring role could be a valid role for the Commission to play as part of the CALFED process. He agreed that local planning is not being evaluated as part of the CALFED ecosystem restoration program.

Commissioner Broddrick noted there are differences between “mitigation”, mitigation to receive approval of a habitat conservation plan, and mitigation to offset development impacts. He said there is a difference between enhancement and mitigation, and in Stone Lakes, the refuge may be crediting improvements above and beyond the existing carrying capacity of the land. He agreed those programs need to be united and incorporate common sense. He said the HCPs offset impacts to endangered species, and only address mitigation County by County. He suggested the Commission work with the Delta counties to coordinate their programs with CALFED.

Chairman McCarty suggested that coordination would lead to better quality habitat, rather than just quantity.

Commissioner McGowan suggested that the Fish and Wildlife Service never considered working with the County’s HCP program in the development of a North Delta National Wildlife Refuge. He agreed that the semantics are important.

Commissioner Yates said there needs to be better coordination between the CALFED proposals—program to program, and geographic area to geographic area.

Commissioner Broddrick said the issue of in-Delta storage is dependent upon water rights and water flow, and does not relate to acres of land to be converted from agriculture to water storage; Ms Aramburu said she would check with CALFED staff.

Commissioner Sanders suggested that the percentages be added to the acres of agricultural land in the Primary Zone and the Legal Delta described on page 3; Ms Aramburu agreed to add the percentages to the text.

Commissioner Broddrick said the letter captures the conflict between aquatic and terrestrial species which will have to be addressed by CALFED.

Commissioner Yates said the restoration program will not result in restoration of anadromous fish populations.

Chairman McCarty said Commissioner Curry’s comments should be included; Ms Aramburu said he commented that there should be a local oversight entity to ensure that CALFED meets its commitments. She said the Ad Hoc Recreation group will address that issue.

Commissioner Yates said there are a number of parcels that could be developed quickly for recreation, and suggested those be a part of early implementation of the CALFED program.

Chairman McCarty suggested adding language to recommend that the CALFED program provide recreation improvements early on in the program to ensure balance.

Commissioner Brean said the letter did a good job addressing possible impacts and refers to the Davis Dolwig Act. He said if recreation is going to be lost, where will those resources be replaced. He suggested that planning should start now.

Vice Chair Mello said all aspects of each program need to be addressed in a “bundle”; this applies to levees, to recreation, to channels, etc.

Commissioner Yates suggested that the phrase “bundle” not be confused with the concept of “getting better together”.

Ms Aramburu said the Ad Hoc recreation group recommended setting aside a percentage of budget to fund recreation; instead, CALFED said recreation would be addressed project-by-project.

Commissioner Nottoli said the concept of “getting better together” must be kept as a key theme over time as the CALFED program is implemented. Certain programs may get out head, and other programs may be forgotten. He suggested in the general comments, the letter should emphasize that all aspects must move forward in unison, and that certain elements or programs should not be left out, or be left behind.

Regarding Delta levees, Chairman McCarty said the issue of who pays is critical to water needs, to land use, to recreation, and to habitat. To date the discussion has been that the allocation of costs will be linked to who benefits.

Commissioner Yates said one of the most important components is the issue of water quality and the need to maintain water quality in the Delta for export as well as for agriculture in the Delta.

Chairman McCarty expressed concern about costs to Delta farmers.

Vice Chair Mello said he told CALFED staff that after Proposition 218, any program that would increase taxes within a reclamation district would be subject to a vote of all the landowners, and not be up to the directors. He suggested that any program that needs full participation to ensure system integrity successful should be funded by CALFED and not rely on the possible support of the reclamation district taxpayers.

Ms Aramburu said she thought the levee component of the CALFED program is one of the strongest and has had full participation by reclamation district engineers and others that have knowledge of the Delta levees and the regional needs. She noted that the fiscal formulas have been revised to reflect comments made by districts, and that the program is voluntary not mandatory. She said a comment could be added to the letter expressing concern about the costs of the levee program and the need to spread those costs appropriately. She added that groups or entities with specific interest in the costs should also submit their own comments.

Chairman McCarty said the Commission has already submitted comments that the implementation of a levee program should be systematic and reflect regional needs for flood protection. He said there might be a district that cannot or will not participate thus leaving a “weak link” in the chain. He emphasized the importance of addressing the fiscal component of the levee program in order to protect water quality and habitat.

Commissioner Brean asked if the comment in the letter regarding the make-up of the oversight committee should be stronger and suggest that the existing oversight structure be left in place; Ms Aramburu agreed to clarify the comment to support the existing oversight structure—“if its not broke, don’t fix it”. She suggested that groups with a specific interest in this issue should also submit comments.

Commissioner Broddrick said it will be interesting to have the Commission discuss the Suisun Marsh levees that may be included in the CALFED levee program. He noted that the Delta smelt are dependent upon their summer home in the Delta.

Ms Aramburu noted a part of the Suisun Marsh is within the Legal Delta. She said there is some new modeling which may show a link between water quality in the Delta and activities in the Suisun Marsh, however, that data is not yet available.

Commissioner Coglianese said the summary supports the CALFED concept of “getting better together”, but does not include language asking that any redirected impacts to the Delta be mitigated. This is the point of the letter and needs to be emphasized.

Chairman McCarty opened the public hearing. There were no public comments, so the public hearing was closed.

Commissioner Broddrick said the goal of CALFED is for the State to “get better together”, however, there is no area of the State that will be more impacted than the Delta. He said that is not boldly stated in the letter and suggested that the closing statement be edited to be stronger.

Commissioner McGowan suggested that the letter be edited to be more affirmative about the Commission’s role in the CALFED process. He said the Commission should urge/demand that the Commission have a meaningful role in the implementation of the program in the Delta as it would affect land use. He thinks that a certain range of projects should have to go to the Commission. He said the Commission will either play a role or not play a role. If that role is advisory or oversight, then the Commission should quote its existing authority and ask that it be respected.

Commissioner Yates agreed, and said the letter should include the Commission’s authority under law and state that CALFED should abide by the law.

Ms Aramburu said the Commission’s authority is limited over CALFED, and the Commission is offering its unique role and knowledge to the process.

Commissioner McGowan said the reference should be to the Commission’s charge to protect and enhance the Delta.

Chairman McCarty suggested adding this language at the start of the letter; a recital of the impacts to the Delta and in the summary, reiterate that point and include the description of the Commission’s legal authority over the three land uses (agriculture, wildlife habitat, and recreation) in the Delta and request a more active role in the overall CALFED process.

Commissioner McGowan suggested the Commission put Mr. Snow on notice that the Commission has a legal jurisdiction, an authority, and a legal role to play in the Delta, and that the Commission expects that CALFED to honor, respect, and respond to that.

Vice Chair Mello asked if CALFED will listen to the Commission; Chairman McCarty said they listen.

Commissioner Cabaldon moved approval in concept of the comments in the draft letter, that the Executive Director incorporate the proposed changes suggested by the Commission, and the letter be reviewed and submitted by the Chair on behalf of the Commission; the motion was seconded by Vice Chair Mello, and approved by unanimous voice vote.

10. Adjourn. The meeting was adjourned at 8:35 p.m.